Appendix A

Opinion of United States Court of Appeals.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 518—September Term, 1968.

(Argued April 17, 1969 Decided May 14, 1969.)

Docket No. 33106

UNITED STATES OF AMERICA,

Appellee,

—against—

ROBERT I. TOUSSIE,

Appellant.

Before:

WATERMAN, SMITH and FEINBERG,

Circuit Judges.

Appeal from conviction in the United States District Court for the Eastern District of New York, after a jury trial before Jacob Mishler, *J.*, for failing to register for selective service in violation of 50 U.S.C. App. § 462(a). Affirmed.

HENRY G. SINGER, Brooklyn, N. Y. (Jacob W. Heller, on the brief), *for Appellant.*

JEROME C. DITORE, Assistant United States Attorney (Vincent T. McCarthy, United States Attorney for the Eastern District of New York, on the brief), *for Appellee.*

FEINBERG, *Circuit Judge*:

After a jury trial before Jacob Mishler, *J.*, in the United States District Court for the Eastern District of New York, appellant Robert I. Toussie was convicted of having failed to register for the draft in violation of 50 U.S.C. App. § 462(a). Appellant was sentenced under 18 U.S.C. § 4208 (b), which commits him to the custody of the Attorney General for study and report, but sentence was stayed and appellant released on his own recognizance pending appeal. Although appellant raises a number of substantial questions, we conclude that his conviction should be affirmed.

Appellant never registered for selective service from June 23, 1959, when he became 18, to the time of his arrest and indictment in 1967. He claims that his sincerely held conscientious beliefs against war prevented him from doing so, that his prosecution was barred by the general five-year statute of limitations, 18 U.S.C. § 3282, that his conviction violated his fifth amendment right against self-incrimination, that there was insufficient proof of his mental capacity, and that there were errors in the charge of the trial judge. We turn first to the claim based on the statute of limitations.

I.

The command of 18 U.S.C. § 3282 is that:

> Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

Appellant's claim is that his offense, if any, was committed in June 1959 on his 18th birthday or a few days thereafter

so that his indictment in 1967, almost eight years later, was barred by the statute. The Government replies that the offense of failing to register is a continuing one; hence the prosecution was timely. This position is based upon a regulation issued by the President, 32 C.F.R. § 1611.7(c), which states:

> The duty of every person subject to registration to present himself for and submit to registration *shall continue at all times*, and if for any reason any such person is not registered on the day or one of the days fixed for his registration, he shall immediately present himself for and submit to registration before the local board in the area where he happens to be. [Emphasis added.]

See also 32 C.F.R. § 1642.2. Appellant rejoins that the regulation cannot change a single statutory offense to a continuing crime. The issue was raised in the trial court before John F. Dooling, Jr., *J.*, on a motion to dismiss the indictment, and Judge Dooling rejected appellant's contention. 280 F. Supp. 473 (E.D.N.Y. 1967).

Surprisingly, the issue has not been litigated frequently, although the few decisions favor the Government. In *Fogel* v. *United States*, 162 F. 2d 54 (5th Cir.), cert. denied, 332 U. S. 791 (1947), the continuing crime theory was applied to failure to register for the draft. Although the decision has been criticized,[1] the only other court of appeals that has considered the question has reached the same result, expressly citing *Fogel* with approval. *McGregor* v. *United*

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[1] See Note, The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution, 102 U. Pa. L. Rev. 630, 644-45 (1954); Stan. Intra. L. Rev. 39 (1948). See also Model Penal Code §§ 107(4), 108(1)(c), Comments (Tent. Draft No. 5, 1956).

States, 206 F. 2d 583 (6th Cir. 1953); cf. *Gara* v. *United States,* 178 F. 2d 38, 40 (6th Cir. 1949), aff'd on another point by an equally divided court, 340 U. S. 857 (1950). In addition, this court used a continuing duty theory in affirming a conviction for the analogous crime of failing to advise the local draft board of a change of address, *United States* v. *Guertler,* 147 F. 2d 796 (2d Cir. 1945). The only apparent contrary authority is a district court decision in *United States* v. *Salberg,* 287 F. 208 (N. D. Ohio 1923), involving World War I registration, but it is unclear whether any regulation then clearly made the duty to register a continuing one.

The tension between the purpose of a statute of limitations and the continuing offense doctrine is apparent; the latter, for all practical purposes, extends the statute beyond its stated term. On the other hand, we are faced with a regulation that clearly establishes a continuing duty and that has long been construed as creating a continuing offense. Appellant argues that the regulation is unconstitutional or unauthorized, but we do not think that is so. The statutory duty to register is set forth in 50 U.S.C. App. § 453, as follows:

> Except as otherwise provided in this title . . ., it shall be the duty of every male citizen of the United States . . . who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

The regulation here involved was promulgated by the President through an Executive Order and does deal with the days and times for registration. Moreover, the President

is authorized by 50 U.S.C. App. § 460 to prescribe rules and regulations necessary for the operation of the selective service system. We could not fairly say that the regulation is outside the congressional grant of power unless it were construed to create an unending duty because of the phrase "shall continue at all times." That is the meaning appellant ascribes to it, envisioning a prosecution at age 70 for failure to register 52 years before at age 18. This contention is understandable in view of the simultaneous indictment of appellant's brother Samuel, who was then almost 33.[2] Were that reading of the regulation correct, we agree that the result would be unfair and absurd. But Judge Dooling found that construction unwarranted and construed the continuing duty to end at age 26, a ruling with which we agree. The power to compel registration flows from the statute which, by its terms, applies only to males between the ages of 18 and 26; the regulation can do no more and should not be construed to attempt to do so. *Cf.* 32 C.F.R. § 1642.12.

Appellant also argues that the general five-year statute of limitations must apply "Except as otherwise expressly provided by law," and that Congress has made no such plain exception for the crime charged here. It might be enough to point out in response that the five-year statute is being applied; the issue is when it starts to run. But, more fundamentally, even if construed as an extension or a tolling of the statute of limitations to five years after

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[2] Judge Dooling held that the 5-year statute of limitations in 18 U.S.C. § 3282 had run as to Samuel and dismissed the indictment. But see *McGregor* v. *United States*, 206 F. 2d 583 (6th Cir. 1953) (indictment at age 30 when predecessor to 18 U.S.C. § 3282 was a 3-year statute of limitations); cf. *Fogel* v. *United States*, 162 F. 2d 54 (5th Cir.), cert. denied, 332 U. S. 791 (1947), motion for new trial denied, 167 F. 2d 763 (5th Cir.), rev'd, 335 U. S. 865 (1948) (*per curiam*).

age 26, the continuing duty regulation is an express provision of "law."

We are aware of other problems lurking in the background, some of which appellant has called to our attention. For example, is each day of failure to register a separate offense, for which a prosecution can be brought? Cf. *Gara* v. *United States, supra.* Can the knowing and wilful failure to register when the duty first attaches be legally cured by a subsequent tardy registration? The Government, in its brief, flatly answered the first question no; an affirmative answer to the second would be questionable at best. However, since the indictment here charged only one offense—wilful failure to register over a lengthy period of time—and appellant never did register, neither issue is squarely raised, except in connection with the fifth amendment argument discussed below. Moreover, are there other continuing duties under the selective service system that are not cut off at age 26, and, if so, when, if ever, does the statute of limitations run as to them? It may be that application of the statute of limitations to this area deserves particularized congressional attention, with a statute, rather than regulations, stating the applicable limitation periods. But the only question before us on this phase of the case is whether the five-year statute of limitations had run on appellant's offense of failing to register up to age 26. We conclude that on this record that defense was properly rejected by Judge Dooling.

II.

Appellant's second claim is that if the statute of limitations did not bar prosecution more than five years after his initial failure to register then the fifth amendment does. The claim is a novel one in the draft registration area, although in *United States* v. *Olson,* 253 F. 233 (W. D.

Wash. 1917), a different type of self-incrimination claim involving World War I registration was made and rejected. See generally Mansfield, The Albertson Case: Conflict Between the Privilege Against Self-Incrimination and the Government's Need for Information, 1966 Sup. Ct. Rev. 103, 125-58. However, appellant draws heavily on recent decisions of the Supreme Court, reversing convictions for failure to comply with other registration statutes on the ground that compliance would have required the registrant to incriminate himself. See *Albertson* v. *Subversive Activities Control Board,* 382 U. S. 70 (1965) (failure to register as member of the Communist Party); *Marchetti* v. *United States,* 390 U. S. 39 (1968) (failure to register as gambler); *Grosso* v. *United States,* 390 U. S. 62 (1968) (failure to pay gambling tax); *Haynes* v. *United States,* 390 U. S. 85 (1968) (possession of unregistered firearm). Appellant's attack is focused solely on the continuing duty regulation. That regulation, it is argued, could not legally be applied to appellant because compliance would have compelled him to disclose his birth date and age, thereby admitting criminal culpability for his prior failure to register. Cf. *United States* v. *Rosenson,* 291 F. Supp. 874 (E. D. La. 1968).

This argument immediately brings to mind several considerations, some suggested by the Government. Thus, there is no claim that, as in the cited cases, the initial requirement of registration for selective service runs afoul of the self-incrimination privilege. The government interest being furthered—the raising of an army—is most significant, and self-registration is probably necessary to enforce the statutory scheme. The purpose of registration is not to detect and prosecute a certain type of criminal, e.g., gamblers, but to select those available and qualified for military service. While it is arguable that the continuing duty regulation is directed at a "selective group inherently suspect of criminal activities," *Albertson* v.

Subversive Activities Control Board, supra, 382 U. S. at 79, many initial failures to register may be due to such innocent reasons as illness, ignorance, or inability to get to a local board. Moreover, the regulations indicate that the aim is get qualified registrants—even delinquent ones—into the armed forces rather than into jail.[3] Cf. *United States* v. *Minor,* 398 F. 2d 511 (2d Cir. 1968). In addition, it may be possible for a young man to register late without giving the incriminatory information, cf. *United States* v. *Sullivan,* 274 U. S. 259 (1927), but it must be conceded that doing so might well focus unwanted attention on him. Moreover, since appellant chose not to register at all, the Government contends that he has no valid claim. Finally, this might well be the type of case in which the privilege would be sufficiently protected by barring any possibly incriminating information in any subsequent prosecution; Judge Dooling in substance accepted this reasoning, but that was before the Supreme Court decisions cited above.

Although some of these considerations are substantial, we conclude that there is a more fundamental reason for rejecting appellant's fifth amendment analysis. A registration statute may create the dilemma whether to incriminate oneself or risk punishment for failure to do so: e.g., whether to register as a communist or a gambler or owner of a firearm or risk prosecution for failing to register, as in *Albertson, Marchetti* or *Haynes.*[4] In these situations, the Supreme Court has applied the privilege to eliminate that

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[3] The regulations provide for referral to a United States Attorney only after the local board fails to convince the registrant to perform his duites. See, e.g., 32 C.F.R. § 1613.16. In other situations a board would presumably rely on the delinquency regulations. See 32 C.F.R. §§ 1642.1-.46. But cf. *Kaohelaulii* v. *United States,* 389 F. 2d 495 (9th Cir. 1968).

[4] Mr. Justice Goldberg referred to the possibility of giving perjured answers, thus converting the "dilemma" into a "trilemma." See *Murphy* v. *Waterfront Comm'n,* 378 U. S. 52, 55 (1964).

problem. But that is not the case here. Assuming for discussion only that Toussie might have incriminated himself by registering, let us say, four years late, we think that he did not risk prosecution by failing to do so, at least not in the sense relevant here. That is, his inaction did not give rise to the threat of punishment beyond that he had already risked. The Government has conceded that only one offense is committed by failing to register between the ages of 18 and 26, and its actions have been consistent with its words. Appellant was indicted for and convicted of only one offense—failing to register on his 18th birthday or at any time. By doing nothing—as indeed was his course—Toussie was not being put to a cruel choice that the privilege is designed to avoid. It is true that because of appellant's inaction from age 18 to age 26, the statute of limitations did not start to run, so that the risk of prosecution was in that sense at least not being diminished. That element of the risk, however, attaches to merely continuing to exist at all, having once committed the crime. Certainly, it would be preferable for one in Toussie's position to shorten a limitation period or to insure the beginning of its lapse. But we do not regard the inability to do so without danger of detection as violating his privilege against self-incrimination. Similarly, leaving the jurisdiction may be a ground for tolling of the statute of limitations, *cf.* 18 U.S.C. § 3290, but we would not regard that as an improper infringement on the right to travel. While the concept of compulsion as used in the fifth amendment context has been liberally construed by the Supreme Court,[5] the unpleasant consequence here of doing nothing is not sufficient to fit properly within that term, cf. Friendly, The Fifth Amendment Tomorrow: The Case for

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[5] See, e.g., *Spevack* v. *Klein*, 385 U. S. 511 (1967); *Garrity* v. *New Jersey*, 385 U. S. 493 (1967); *Griffin* v. *California*, 380 U. S. 609 (1965).

Constitutional Change, 37 U. Cin. L. Rev. 671, 675 n. 25, 700 (1968), particularly in view of the importance of the government interest involved. In short, we hold that the fifth amendment did not bar prosecution here.

III.

Appellant's remaining arguments do not require extensive comment. The claim is made that failure to register for reasons of conscience is protected by the first amendment. However, appellant apparently recognizes that the authorities are against him, asking for "a new look by the Federal Courts." Certainly, various courts of appeals have rejected the contention. See, e.g., *United States* v. *Kime,* 188 F. 2d 677 (7th Cir.), cert. denied, 342 U. S. 823 (1951); *Michener* v. *United States,* 184 F. 2d 712 (10th Cir. 1950); *Richter* v. *United States,* 181 F. 2d 591 (9th Cir.), cert. denied, 340 U. S. 892 (1950); *Gara* v. *United States, supra.* And in *United States* v. *Nugent,* 346 U. S. 1 (1953), the Supreme Court emphasized the constitutionality of the statutory treatment afforded conscientious objectors, which required registration, then investigation of the sincerity of alleged religious beliefs and, finally, assignment to non-military alternative service. The Government's ability to carry out this statutory scheme for conscientious objectors clearly depends in large measure on identification of those holding such beliefs. It is true that in theory the sincerity of one who claims that his conscientious beliefs prevented him even from registering could be tested by the trier of fact in a criminal trial, the procedure appellant sought here, but the present procedures of administrative decision and judicial review do not constitute an infringement of the first amendment. While a proper test of a civilized society is the solicitude with which it treats its principled dissenters, under present

doctrine requiring them to register for eventual assignment to non-military alternative service is constitutional.

Appellant's final claims are insubstantial. There was ample evidence before the jury to warrant a finding that he had the requisite mental capacity, despite a history of emotional disturbance. Moreover, the trial court properly charged the jury on this issue under the test of *United States* v. *Freeman*, 357 F. 2d 606 (2d Cir. 1966), and committed no error in its charge or rulings on defendant's requests to charge.

Judgment affirmed.

Appendix B

Memorandum and Order of District Court.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

67 Cr. 183

UNITED STATES OF AMERICA,

against

ROBERT I. TOUSSIE,

Defendant.

67 Cr. 184

UNITED STATES OF AMERICA,

against

SAMUEL R. TOUSSIE,

Defendant.

Appearances:

MICHAEL ROSEN, Esq. (JOSEPH P. HOEY, Esq., United States Attorney, of Counsel) for the Government

JACOB HELLER, Esq. (HENRY G. SINGER, Esq., of Counsel) for the Defendants.

DOOLING, *D.J.*

Each of the defendants has been indicted for wilfully failing to perform a duty required of him by The Universal Military Training and Service Act of 1946 by wilfully

evading and refusing registration by the Selective Service System. Robert Toussie is charged with doing so from June 23, 1959, until February 3, 1967, Samuel Toussie is charged with doing so from May 9, 1952, until February 3, 1967. The indictments were returned on May 4, 1967.

Defendants move to dismiss the indictments on various grounds the most substantial of which is that they are barred by the five year statute of limitations of 18 U.S.C. Sec. 3282; it is argued also that if the statute requiring registration (50 U.S.C. App. Sec. 453) is construed as imposing a continuing duty to register, it is invalid under the Fifth Amendment; it is urged that the indictments rest on evidence procured in violation of the Sixth Amendment in that the defendants' Attorney-client privilege was violated, in violation of their Fifth Amendment right not to incriminate themselves, and in violation of their Fourth Amendment rights to be free of unreasonable searches and seizures. Defendants move also to suppress evidence that has allegedly been illegally seized, for an inspection of the Grand Jury minutes, for a discovery of all inculpatory statements and statements made by their former attorney, and for a bill of particulars.

1. The motion to dismiss the indictments as barred by the five year statute of limitations is granted as to the defendant Samuel R. Toussie and denied as to the defendant Robert I. Toussie.

The offense is a continuing one; the man between eighteen and twenty-six does not discharge his duty by failing to register on the day he attains his eighteenth birthday or within five days thereafter; he continues under a duty to present himself for registration as long as he is liable for service in the armed forces, (cf. 32 C.F.R. Sec. 1611.7 (c)), and he is liable from eighteen years six months, until the twenty-sixth anniversary of his birth (50 U.S.C. App.

Sec. 454(a)). Hence, it can not be doubted since *Fogel* v. *United States*, 5th Cir. 1947, 162 F. 2d 54, and *United States* v. *Guertler*, 2d Cir. 1945, 147 F. 2d 796, 797, that an indictment is timely if found within five years after the last day on which there was a duty to register. The indictment against Robert Toussie is therefor timely if he had not passed the twenty-sixth anniversary of his birth more than five years before the indictment was filed on May 4, 1967. It is inferred that the Government's case is that Robert Toussie was born on June 23, 1941, and attained the age of eighteen on June 23, 1959. If that is so, he attained the age of twenty-six on June 23, 1967 and was still liable to military service and under a duty to register when the indictment was returned.

The situation of Samuel Toussie is different. It is evidently the intention of the Government to show that he was born on May 9, 1934. If so, he became twenty-six on May 9, 1960, and the indictment was not returned against him until nearly seven years after the last day on which he was liable to military service and under a duty to register. *McGregor* v. *United States*, 4th Cir. 1953, 206 F. 2d 583, held on comparable facts that an indictment was timely, relying on the "continuing duty" principle established by the *Fogel* case. However, the Court evidently failed to observe that after Fogel's failure to register the law had been amended to extend the period of liability to service until attainment of 65 years, and men up to 65 had been required to register, so that, when indicted, Fogel had been liable to service and under a duty to register within the limitary period. See *Fogel* v. *United States, supra*, 162 F. 2d at 56, footnote 5 (Citing the change in the law, the Court said, "Attainment of the age of forty-five by Fogel after February 16, 1964, would not, therefore have relieved him of his continuing duty to register."); *cf. United States* v. *Guertler, supra*, 147 F. 2d at 797. There appears to be no

escape from the proposition that the statute of limitations must bar the indictment if, as appears to be the case, it charges a continuing crime that by its nature could not have been committed by Samuel Toussie after May 9, 1960. If the Government intends to prove that Samuel Toussie was born on or after May 4, 1936, then it may move to have the present order set aside.

2. The argument based on the Fifth Amendment is that once a person liable to military service fails to register on time, his later registration is a self-accusatory act which, therefore, he cannot be required to perform. Reliance is placed of course, on *Albertson* v. *Subversive Activities Control Board,* 1965, 382 U. S. 70, and on the now-doubtful status of *United States* v. *Kahriger,* 1952, 345 U. S. 27. The argument is invalid. Whether a man has committed a crime or not, as long as he is liable to military service, he is under a duty to register. His registration may possibly facilitate his prosecution, but it is not required in order to advance that purpose nor, indeed, could the occasion of registration be exploited by the clerk supervising the registration to conduct an essentially criminal investigation by inquiring into the registrant's knowledge of his duty and the motivations of his delinquency. So long as the registration inquiries are relevant to and addressed to the proper business of the Selective Service System, the occasion involves only that bare minimum of self-incrimination flowing from self-identification that is inseparable from any continuance as a member of society. Like an accused's compelled appearance at his trial, where he may be seen, recognized, and condemned by identifying testimony, or an accused person's apperance in a line-up, or a suspect's surrendering a blood sample to be tested for its alcoholic content, the person liable for military service cannot be excused from his compelled presentation of himself and his compelled submission to registration even though adventitiously, and

not purposively, it may facilitate his conviction. See *Michener* v. *United States*, 10th Cir. 1950, 184 F. 2d 712 (registrant cannot present self, give information, and require clerk to complete the forms and effect the registration without the registrant's signing any of the forms). While much is made of the matter semantically, the simple facts are that registration is not *in se* self-accusatory, and that delinquency cannot be suffered to create an exemption from the duty to register if there is—and there is—a power to raise an army, Cf. *United States* v. *Sullivan*, 1927, 274 U. S. 259, 263, 264. Whether, if defendants had registered, their registrations could have been used in evidence against them is a different matter altogether. Cf. *Garrity* v. *New Jersey*, 1967, 385 U. S. 493.

3. Defendants state that, at a request of the Federal Bureau of Investigation made to defendants' former attorney Arthur N. Fields, Esq., both defendants met with Special Agent Corless and another agent in Mr. Fields' office. The defendants were asked whether they had registered, but they only gave their names and addresses in response. Defendants say that on the next day, Friday, February 3, 1967, they were told that warrants had been issued for their arrests, and that "arrangements were made for (them) to voluntarily surrender to the F.B.I." The defendants went together to the F.B.I. office, submitted to arrest, were finger printed, searched and their possessions listed, and then they went to the United States Attorney's office in Brooklyn, and then were taken before the Commissioner. The Commissioner defendants say, declined to release them without requiring bail unless they answered questions about the backgrounds including the schools they had attended, their dates of graduation and how long they had lived at their then present addresses. Defendants say that they saw Special Agent Corless making notes of the

defendants' answers. Both defendants were then released on their own recognizances. (The Assistant United States Attorney had requested that bail be fixed at $50,000 for each defendant).

The affidavit on which the warrant for arrest issued was made by Special Agent Corless; it asserted as grounds for arrest that review of Selective Service records revealed no record of registration by either defendant, and that "an attorney representing" each defendant stated orally "to Selective Service personnel that the defendant has not and would not register for the Selective Service". Each defendant swears that he was "not aware that a conversation had taken place between my attorney and Selective Service personnel" and that "I never authorized or gave permission to Mr. Fields to divulge any such information to the Selective Service or any other Agency of the Government". Both defendants argue that Mr. Fields would not have and, therefore, probably did not make any such statement to the Selective Service personnel.

The Government states, and it is not denied, that defendants were represented by counsel at the time of the arrest, and during the proceedings before the Commissioner. No affidavit by Mr. Fields is presented, and the Government presents no affidavit except that of the Assistant United States Attorney.

It is obvious that the defendants have not registered or the indictments would long since have been dismissed on the Government's motion. And it is equally obvious that the Government needs no more than the name and address of a delinquent to embark on its inquiry and determine the objective facts. Neither the defendants nor the Government have disclosed what initiated the inquiry that led to the indictments.

If the affidavit of Corless, alleging that defendants' attorney had told Selective Service that defendants had not

and would not register, was a correct relation of what he was told (whether or not his informant was correctly reporting what the attorney had said), the affidavit was sufficient to support a warrant of arrest. The statement that a review disclosed the absence of any registration record must be taken as correct in the absence of any showing that there is no means of effective review. The second statement, reciting the alleged statement of the attorney to Selective Service personnel might have been more precise in identifying the personnel, but, given the kind and the circumstances of the case, it sufficed. In the present cases arrest was a prearranged formality, and there is no suggestion that Mr. Fields was ignorant of the content of the affidavit either when the pre-arranged arrest occurred, or when the proceedings before the Commissioner took place.

The statement in Corless's affidavit will not be admissible against defendants at the trial, nor will Corless's testimony about what the Selective Service personnel said. Even the Selective Service personnel will be able to testify to the statement allegedly made by defendants' attorney only if the Government shows that defendants authorized the statement, *Cf. Laird* v. *Air Carrier Engine Service,* 5th Cir. 1959, 263 F. 2d 948, 953; *City of Long Beach* v. *Metcalf,* 9th Cir. 1939, 103 F. 2d 483, 487. The appeal to constitutional considerations is out of place; there is not here any stealthy governmental intrusion into the confidential communications between attorney and client. Contrast *Black* v. *United States,* 1966, 385 U. S. 26; *O'Brien* v. *United States,* 1967, 386 U. S. 345. The question is, remotely and contingently, one over the admissibility of a damaging statement about a fact readily provable in other ways.

While there is uncertainty about the exact extent to which the affidavit underlying a warrant may be challenged after the warrant has been executed where the affidavit, if true, is sufficient to support the warrant, it would appear

that one seeking to challenge the affidavit must at minimum show that the affiant was consciously presenting to the Commissioner an affidavit that the affiant knew was false or should clearly have realized was false. Cf. *United States v. Pearce,* 7th Cir. 1960, 275 F. 2d 318, 321-322. No such showing is made here, but, at most, there are only assertions that defendants' attorney could not have said what he is said to have said, and, if he did, he was not authorized to say it. That rises only a little, if at all, above speculation.

4. The general attack on the affidavit supporting the warrant emphasizes its failure to name the attorney, give the time and place of his statement, describe the nature of the review of the Selective Service records, and disclose the age of the defendant. In other circumstances and in cases of other sorts such criticisms might have force, but the offense charged is utterly simple, and the few words used to describe it and to establish probable cause did so adequately.

5. The attack on the arrest and incident search is not supported by the affidavits. To the extent that defendants wish to keep the point alive as a motion to suppress the use in evidence of anything taken from the defendants during the search, and to support it by testimony, the motion is referred to the Judge to whom the case is assigned for trial.

6. The motion to suppress the information obtained at the proceeding before the Commissioner appears to be devoid of merit. Defendants were represented by counsel, there would have been no difficulty in presenting the point now made to the Commissioner, to the District Court and to the Court of Appeals in rapid succession. The factors

relevant on a bail application are well known, and an inquiry into defendants' roots in the community is automatic on any such application. If the proceeding was perverted from its proper end in order to obtain a discovery of evidence useful in the prosecution and useless in determining whether to require bail and, if so, in what amount, then defendants should have objected at that time and to the Commissioner in the first instance. No coercion or duress is shown that would warrant the exclusion from evidence of the Commissioner's record of defendants' admissions, if any were made. If defendants mean to press the point and support it by testimony, then it is referred to the Judge to whom the case is assigned for trial.

7. The motion to inspect the Grand Jury minutes or dismiss the indictment as based on tainted evidence is denied. No ground for an examination of them is advanced.

8. The motion for discovery is granted to the extent of directing disclosure of the text reporting defendants' statements or their attorney's statements as set forth, whether in direct discourse, paraphrase, summary or otherwise, in any document prepared by Government personnel, without disclosing any other parts of the document except its date and the identity of its author.

9. The motion for particulars is misconceived and is denied except as to item (b) (ii) which is granted in substance.

It is, accordingly,

ORDERED that the indictment in 67 Cr. 184 (the case of Samuel R. Toussie) is dismissed on the ground that the indictment was not found within five years after the twenty-sixth anniversary of the defendant's birth and prosecution was barred by 18 U.S.C. Sec. 3282, and all other motions of Samuel R. Toussie are deemed with-

drawn; and it is, in 67 Cr. 183, the case of Robert I. Toussie,

ORDERED that the motion to suppress the use in evidence of matter taken from defendant during the search on February 3, 1967, and to suppress and exclude the statements taken from defendant during the bail hearing are referred to the Judge to whom the case is assigned for trial for disposition; and it is further

ORDERED that the Government furnish to defendant Robert I. Toussie within twenty days copies of the matter directed to be disclosed in the paragraph numbered "8" above in lieu of permitting defendant to inspect and copy the documents in which the statements are contained; and it is further

ORDERED that the Government furnish to defendant Robert I. Toussie within twenty days the following particularization of the indictment; the places within the Eastern District of New York, and elsewhere, at which defendant failed and neglected to perform a duty required of defendant by the Universal Military Training and Service Act of 1948, the Presidential Proclamations and the Regulations under the Act by evading and refusing registration by the Selective Service System; and it is further

ORDERED that the motions of Robert I. Toussie to dismiss the indictment, to inspect the Grand Jury minutes, and for a hearing under Rule 12(b)(4) are denied.

Brooklyn, New York
August 30, 1967

J. DOOLING
U.S.D.J.

Appendix C

Judgment of United States Court of Appeals.

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourteenth day of May, one thousand nine hundred and sixty-nine.

Present: HON. STERRY R. WATERMAN,
HON. J. JOSEPH SMITH,
HON. WILFRED FEINBERG,
Circuit Judges.

United States of America,

Plaintiff-Appellee,

v.

Robert I. Toussie,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk.

Appendix D

Order of United States Court of Appeals Denying Petition for Rehearing.

UNITED STATES COURT OF APPEALS,
SECOND CIRCUIT.

UNITED STATES OF AMERICA,

Appellee,

against

ROBERT I. TOUSSIE,

Appellant.

A petition for a rehearing having been filed herein by counsel for the appellant, or in the alternative for an order staying the court's mandate, with the continuance of appellant on his own recognizance.

Upon consideration thereof, it is

Ordered that the petition for rehearing be and it hereby is denied, that the petition for a stay of the court's mandate be and it hereby is granted pursuant to the provisions of Rule 41(b), Federal Rules of Appellate Procedure, and that appellant be continued on his own recognizance, if the provisions of said Rule are complied with, pending the filing and determination of an application for a writ of certiorari.

STERRY R. WATERMAN

.....

Sterry R. Waterman

J. JOSEPH SMITH

.....

J. Joseph Smith

WILFRED FEINBERG

.....

Wilfred Feinberg

June 9, 1969

Circuit Judges.

Appendix E

Order Extending Time to File Petition for Writ of Certiorari.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969

No. .....

ROBERT I. TOUSSIE,

Petitioner,

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s), IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 8th, 1969.

/s/ JOHN M. HARLAN
Associate Justice of the Supreme Court of the United States

Dated this 23 day of June, 1969.

Appendix F

Constitutional Provisions, Statutes and Regulations.

CONSTITUTION

First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTES

Title 50 U.S.C. App.:

§ 453. Registration

Except as otherwise provided in this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix], it shall be the duty of every male citizen of the United States, and every other male person now or hereafter in the United

States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

June 24, 1948, c. 625, Title I, § 3, 62 Stat. 605; June 19, 1951, c. 144, Title I, § 1(c), 65 Stat. 76.

§ 454. Persons liable for training and service

(a) Age limits; training in National Security Training Corps; physical and mental fitness; adequate training facilities; assignment to stations and units; training period; medical specialist categories

Except as otherwise provided in this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix], every male citizen of the United States and every male alien admitted for permanent residence, who is between the ages of 18 years and 6 months and 26 years, at the time fixed for his registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title [section 453 of this Appendix], or who is otherwise liable as provided in section 6(h) of this title [section 456(h) of this Appendix], shall be liable for training and service in the Armed Forces of the United States; *Provided,* That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces; *Provided further, That, notwithstanding any other provision of law, any*

*registrant who has failed or refused to report for induction shall continue to remain liable for induction and when available shall be immediately inducted;** *Provided further,* That any male alien who is between the ages of 18 years and 6 months and 26 years, at the time fixed for registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title [section 453 of this Appendix], or who is otherwise liable as provided in section 6(h) of this title [section 456(h) of this Appendix], who has remained in the United States in a status other than that of a permanent resident for a period exceeding one year (other than an alien exempted from registration under this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix] and regulations prescribed thereunder) shall be liable for training and service in the Armed Forces of the United States, except that any such alien shall be relieved from liability for training and service under this title [said sections] if, prior to his induction into the Armed Forces he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any alien who makes such application shall thereafter be debarred from becoming a citizen of the United States. The President is authorized, from time to time, whether or not a state of war exists, to select and induct into the Armed Forces of the United States for training and service in the manner provided in this title [said sections] (including but not limited to selection and induction by age group or age groups) such number of persons as may be required to provide and maintain the strength of the Armed Forces.

* * *

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* Italicized portion added in June, 1967 (81 Stat. 100).

§ 462. Offenses and penalties

(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title [said sections], rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making, of any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title [said sections], or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title [said sections], or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title [said sections], or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said sections], or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this title [said sections] or the rules or regulations made pursuant

thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title [said sections] unless such person has been actually inducted for the training and service prescribed under this title [said sections] or unless he is subject to trial by court martial under laws in force prior to the enactment of this title [June 24, 1948]. Precedence shall be given by courts martial under laws in force prior to the enactment of this to the trial of cases arising under this title, and such cases shall be advanced on the docket for immediate hearing, and an appeal from the decision or decree of any United States district court or United States court of appeals shall take precedence over all other cases pending before the court to which the case has been referred.

Title 18 U.S.C.

§ 3282. Offenses not capital

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital unless the indictment is found or the information is instituted within five years next after such offense shall have been committed. As amended Sept. 1, 1954, c. 1214, § 12(a), formerly § 10(a), 68 Stat. 1145, renumbered Sept. 26, 1961, Pub. L. 87-299, § 1, 75 Stat. 648.

PRESIDENTIAL PROCLAMATIONS

Proclamation No. 2799

July 20, 1948, 13 F.R. 4173, 62 Stat. 1531

REGISTRATION

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by title I of the Selective Service Act of 1948 [sections 451-470 of this Appendix], do proclaim the following:

1. The registration of male citizens of the United States and other male persons residing in the United States who shall have attained the eighteenth anniversary of the day of their birth and who shall have not attained the twenty-sixth anniversary of the day of their birth shall take place in the several States of the United States, the District of Columbia, the Territories of Alaska and Hawaii, Puerto Rico, and the Virgin Islands between the hours of 8:00 A.M. and 5:00 P.M. on the day or days hereinafter designated for their registration, as follows:

(a) Persons born in the year 1922 after August 30, 1922, shall be registered on Monday, the 30th day of August, 1948.

(b) Persons born in the year 1923 shall be registered on Tuesday, the 31st day of August, 1948, or on Wednesday, the 1st day of September, 1948.

(c) Persons born in the year 1924 shall be registered on Thursday, the 2nd day of September, 1948, or on Friday, the 3rd day of September, 1948.

(d) Persons born in the year 1925 shall be registered on Saturday, the 4th day of September, 1948, or on Tuesday, the 7th day of September, 1948.

(e) Persons born in the year 1926 shall be registered on Wednesday, the 8th day of September, 1948, or on Thursday, the 9th day of September, 1948.

(f) Persons born in the year 1927 shall be registered on Friday, the 10th day of September, 1948, or on Saturday, the 11th day of September, 1948.

(g) Persons born in the year 1928 shall be registered on Monday, the 13th day of September, 1948, or on Tuesday, the 14th day of September, 1948.

(h) Persons born in the year 1929 shall be registered on Wednesday, the 15th day of September, 1948, or on Thursday, the 16th day of September, 1948.

(i) Persons born in the year 1930 before September 19, 1930, shall be registered on Friday, the 17th day of September, 1948, or on Saturday, the 18th day of September, 1948.

(j) Persons who were born on or after September 19, 1930, shall be registered on the day they attain the eighteenth anniversary of the day of their birth, or within five days thereafter.

2. (a) Every male citizen of the United States and every other male person residing in the United States other than persons excepted by section 6(a) of title I of the Selective Service Act of 1948 [section 456(a) of this Appendix], who is within any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands and who shall have attained the eighteenth anniversary of the day of his birth and who shall have not attained the twenty-sixth anniversary of the day of his birth on the day or any of the days fixed herein for his registration is required to and shall on that day or any of those days present him-

self for and submit to registration before a duly designated registration official or selective service local board having jurisdiction in the area in which he has his permanent home or in which he may happen to be on that day or any of those days.

(b) A person subject to registration may register after the day or days fixed for registration in case he is prevented from registering on that day or any of those days by circumstances beyond his control or because he is not present in any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, on that day or any of those days. If he is not in any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, on the day or any of the days fixed for registration but subsequently enters any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, he shall within five days after such entrance present himself for and submit to registration before a duly designated registration official or selective service local board. If he is in any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, on the day or any of the days fixed for registration but because of circumstances beyond his control is unable to present himself for and submit to registration on that day or any of those days he shall do so as soon as possible after the cause for such inability ceases to exist.

3. Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith.

4. I call upon the Governors of each of the several States, the Territories of Alaska and Hawaii, Puerto Rico, and the Virgin Islands and the Board of Commissioners of the District of Columbia, and all officers and agents of the United States and all officers and agents of the several States, the Territories of Alaska and Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia, and political subdivisions thereof, and all local boards which, and agents thereof who, may be appointed under the provisions of title I of the Selective Service Act of 1948, or the regulations which may be prescribed thereunder, to do and perform all acts and services necessary to accomplish effective and complete registration.

5. In order that there may be full cooperation in carrying into effect the purposes of title I of the Selective Service Act of 1948, I urge all employers and Government agencies of all kinds—Federal, State, territorial and local —to give those under their charge sufficient time in which to fulfill the obligations of registration incumbent upon them under the said Act and this proclamation.

HARRY S. TRUMAN

Proclamation No. 2942

Aug. 30, 1951, 16 F. R. 8969, 65 Stat. c35

REGISTRATION—SUPPLEMENTING PROCLAMATION No. 2799

1. The registration of male citizens of the United States who are required to register by the said Proclamation No. 2799 of July 20, 1948 [set out as a note under this section], shall continue to be accomplished in accordance with the provisions of that proclamation.

2. The registration in the several States of the United States, the District of Columbia, the Territories of Alaska and Hawaii, Puerto Rico, and the Virgin Islands of male persons who are not citizens of the United States and who are subject to registration under section 3 of title I of the Universal Military Training and Service Act, as amended [this section], shall hereafter be accomplished in accordance with paragraph numbered 3 of this proclamation.

3. (a) The registration of male persons who are not citizens of the United States who shall have attained the eighteenth anniversary of the day of their birth and who shall have not attained the twenty-sixth anniversary of the day of their birth shall take place in the several States of the United States, the District of Columbia, the Territories of Alaska and Hawaii, Puerto Rico, and the Virgin Islands between the hours of 8:00 A.M. and 5:00 P.M. on the day or days hereinafter designated for their registration as follows:

(1) Every person born on or after September 15, 1925, but not after September 14, 1933, shall be registered on Friday, the 14th day of September, 1951, or on any day within the period of six months following the day on which he entered any of the following: The continental United States, the Territoy of Alaska, the Territory of Hawaii, Puerto Rico, the Virgin Islands, and Guam.

(2) Every person born after September 14, 1933, shall be registered on the day he attains the eighteenth anniversary of the day of his birth, or within five days thereafter, or on any day within the period of six months following the day on which he entered any of the following: The continental United States, the Territory of Alaska,

the Territory of Hawaii, Puerto Rico, the Virgin Islands, and Guam.

(b) Every male person now or hereafter in the United States who is not a citizen of the United States, other than persons excepted by or pursuant to section 6(a) of title I of the Universal Military Training and Service Act, as amended [section 456(a) of this Appendix] and those previously registered pursuant to the said Proclamation No. 2799 of July 20, 1948 [set out as a note under this section], or pursuant to the said Proclamation No. 2938 of August 16, 1951 [set out as a note under this section], who is within any of the several States of the United States, the District of Columbia the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands and who shall have attained the eighteenth anniverary of the day of his birth and who shall have not attained the twenty-sixth anniversary of the day of his birth on the day or any of the days fixed herein for his registration is required to and shall on that day or any of those days present himself for and submit to registration before a duly designated registration official or selective service local board having jurisdiction in the area in which he has his permanent home or in which he may happen to be on that day or any of those days.

(c) If a person subject to registration who is not a citizen of the United States is in any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, on the day or any of the days fixed for registration but because of circumstances beyond his control is unable to present himself for and submit to registration on that day or any of those days he shall do so

as soon as possible after the cause of such inability ceases to exist. If a person subject to registration who is not a citizen of the United States is not in any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, on the day or any of the days fixed herein for the registration of a person of his age but subsequently enters any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, he shall present himself for and submit to registration before a duly designated registration official or selective service local board within the period of six months following the day on which he entered any of the following: The continental United States, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, the Virgin Islands and Guam.

(d) Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith.

HARRY S. TRUMAN.

REGULATIONS

Title 32 C.F.R.

§ 1611.7 Responsibility for performance of duty.

(a) Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith.

(b) Every person who, on the day or one of the days fixed for registration, is required to be registered is per-

sonally charged with the duty of presenting himself before the proper officials and submitting to registration.

(c) The duty of every person subject to registration to present himself for and submit to registration shall continue at all times, and if for any reason any such person is not registered on the day or one of the days fixed for his registration, he shall immediately present himself for and submit to registration before the local board in the area where he happens to be.

(d) Persons required to present themselves for and submit to registration shall not be paid for performing such obligation nor shall they be paid travel allowances or expenses.

Part 1613—Registration Procedures

Place and Time

Sec.

1613.1 Place and time of registration.

Manner of Registration

1613.11 Interview of the registrant.
1613.12 Instructions concerning completion of registration card.
1613.13 Registrant's signature.
1613.14 Certification by registrar.
1613.16 Recalcitrants.

• • •

Authority: The provisions of this Part 1613 issued under sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

PLACE AND TIME

§ 1613.1 Place and time of registration.

(a) Any person required to be registered may present himself for and submit to registration at any designated place of registration or at the office of any local board during the hours for registration specified in the Presidential proclamation or during the usual business hours.

(b) All persons waiting to register at any place of registration at the closing hour on the day or the last one of the days fixed for their registration by the Presidential proclamation shall be registered.
[13 F. R. 4535, Aug. 6, 1948. Redesigned at 14 F. R. 5021, Aug. 13, 1949]

MANNER OF REGISTRATION

§ 1613.11 Interview of the registrant.

(a) Every registrant before being registered shall enter his name and place of residence upon one of the numbered lines on the Tally Sheet (SSS Form No. 4). If the registrant is unable to write, the registrar shall print the registrant's name and place of residence on the Tally Sheet (SSS Form No. 4). All persons who present themselves for registration shall be registered on a Registration Card (SSS Form No. 1). All entries on the Registration Card (SSS Form No. 1) must be made by the registrar and shall be in ink, clear and legible. The registrar shall not permit anyone other than himself to write on the Registration Card (SSS Form No. 1) except when the registrant signs the completed card.

(b) The space on the Registration Card (SSS Form No. 1) for the selective service number shall be left blank.

(c) The registrar shall obtain from the registrant and by observation of the registrant the information necessary

to complete the entries on the Registration Card (SSS Form No. 1), and shall enter the information in the proper items of the card. The registrar shall make certain that the registrant fully understands what information is required and if any information given by the registrant is not clear the registrar shall carefully explain to the registrant what information is required and request that it be furnished clearly and correctly.

[13 F. R. 4535, Aug. 6, 1948, as amended by 16 F. R. 9030, Sept. 6, 1961, 28 F. R. 7497, July 24, 1963. Redesignated at 14 F. R. 5021, Aug. 13, 1949]

§ 1613.12 Instructions concerning completion of registration card.

(a) The registrar shall take extreme care that the place of residence of the registrant is correctly entered in item 2 of the Registration Card (SSS Form No. 1). The local board having jurisdiction over the place of residence entered in item 2 of the Registration Card (SSS Form No. 1) shall always have jurisdiction over the registrant, unless otherwise directed by the Director of Selective Service. The registrar shall require the registrant to give sufficient information as to the location of the place of his residence to establish such place within the jurisdiction of a local board. The registrant shall not be permitted to give a place of residence outside of the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone. In describing his place of residence, the registrant shall give the street number thereof, when used, and in every case he shall give the name of the town, township, village, or city, and the county and State in which it is located. No R.F.D. route number shall be

sufficient unless it is supplemented by more particular information showing where the place of residence is located on the R.F.D. route. The registrant shall be permitted to determine what place he desires to give as his residence when he is not located in the same place all of the time.

(b) The registrar shall enter the mailing address of the registrant in item 5 of the Registration Card (SSS Form No. 1) only when it is not the same as the place of residence entered in item 2. It should be made clear to the registrant that he should give as his mailing address an address normally regarded by him as a permanent address at which he would expect to receive important communications. The registrar shall advise the registrant that a correct mailing address is most important because it is the address to which all notices to the registrant will be sent, and that he must advise his local board each time there is a change in his mailing address.

(c) The registrar, in entering the date of birth of the registrant in item 3 of the Registration Card (SSS Form No. 1), shall use the name of the month or an abbreviation thereof. No numerical designation for the month shall be used.

[Amdt. 77, 23 F. R. 4000, June 24, 1958, as amended by Amdt. 84, 24 F. R. 7693, Sept. 24 1959]

§ 1613.13 Registrant's signature.

(a) When the provisions of §§ 1613.11 and 1613.12 have been carried out, the registrar shall have the registrant verify the correctness of the entries on the Registration Card (SSS Form No. 1).

(b) The registrant shall then sign his name, exactly as he usually signs it, in the space on the Registration

Card (SSS Form No. 1) provided for his signature. If he cannot sign his name, he shall make his mark, and the registrar shall then write in after the mark the words "The mark of ....., made
(Name of registrant)
in my presence" and shall sign his own name thereunder, followed by the word "Registrar."

(c) If the registrant is unable or refuses to sign the Registration Card (SSS Form No. 1) or to make a mark in lieu of such signature, the registrar shall sign such registrant's name and indicate that he has done so by signing his own name, followed by the word "Registrar" beneath the name of such registrant, and the act of the registrar in so doing shall have the same force and effect as if such registrant had signed the Registration Card (SSS Form No. 1), and such registrant shall thereby be registered.

[13 F. R. 4535, Aug. 6, 1949. Redesignated at 14 F. R. 5021, Aug. 13, 1949]

§ 1613.14 Certification by registrar.

(a) After the Registration Card (SSS Form No. 1) is signed, the registrar shall note, in the space provided therefor, the registrant's answers which he believes to be incorrect or false, if any. If he does not believe any of the registrant's answers to be incorrect or false, he shall write the word "None" in such space. It is the duty of the registrar to report on the Registration Card (SSS Form No. 1) any answers of the registrant he believes to be incorrect or false.

(b) The registrar shall then sign the certification and fill in the date of registration on the Registration Card (SSS Form No. 1). The registrar should then carefully check the completed Registration Card (SSS Form No. 1)

to be sure that every question is correctly answered and that all the answers are complete and legible.

[13 F. R. 4536, Aug. 6, 1948, as amended by Amdt. 77, 23 F. R. 4600, June 24, 1958. Redesignated at 14 F. R. 5021, Aug. 13, 1949]

§ 1613.16 Recalcitrants.

If a registrant refuses to cooperate or is inclined to evade, refuses to answer, or answer falsely, his attention should be called to the penal provisions of title I of the Military Selective Service Act of 1967. If he is still refractory, witnesses should be called and, after the penalty of the law has been explained again to him in the presence and hearing of witnesses, a full opportunity should be given him to reconsider his actions and answer the questions. If he is still refractory, his name and the names of the witnesses should be noted and the case immediately reported to the United States district attorney. The registration should not be obstructed or delayed. Persons attempting to obstruct or delay it should be dealt with promptly and firmly.

[Amdt. 28, 16 F. R. 9030, Sept. 6, 1951, as amended by E. O. 11360, 32 F. R. 9787, July 4, 1967]

§ 1642.3 Compliance with procedures of this part not condition precedent to prosecution.

Compliance by a local board or any other agency of the Selective Service System with any or all of the procedures prescribed by the regulations in this part is not a condition precedent to the prosecution of any person under the provisions of section 12 of title I of the Military Selective Service Act of 1967.

[E. O. 10292, 16 F. R. 9862, Sept. 28, 1951; E. O. 11360, 32 F. R. 9788, July 4, 1967]